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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 PACIFIC COAST CONTAINER, INC.

8 Plaintiff,

9 v.

10 ROYAL SURPLUS LINES INSURANCE CO.,

11 Defendant.
12

Case No. C08-278MJP

ORDER DENYING MOTION
FOR RECONSIDERATION

13 This matter comes before the Court on Plaintiff's motion for reconsideration regarding
14 the Court's July 8, 2008 Order denying Plaintiff's motion for partial summary judgment. (Dkt.
15 No. 26.) On July 23, the Court called for a response to the motion. (Dkt. No. 27.) Having
16 considered the motion and response (Dkt. No. 28), the Court DENIES the motion for
17 reconsideration.

18 In this action, Pacific Coast sued its insurer, Royal, for failing to provide coverage for a
19 negligence claim by Lucatero (a leased worker working at Pacific Coast's facility) against
20 Pacific Coast. Pacific Coast argues that the Court incorrectly interpreted an exclusionary
21 provision in the stop gap endorsement of the insurance contract in its July order. The Court
22 concluded that the exclusionary provision (the "exclusion") operated to exclude coverage for
23 Lucatero's claims against Pacific Coast. The provision at issue excludes from coverage:

24 **any claim brought against you by or on behalf of any employee for 'bodily**
25 **injury' or death resulting therefrom (1) if benefits therefore [sic] under any**
26 **workers' compensation or occupational disease law are accepted by or on**
27 **behalf of such employee.**

1 In its reply brief, Plaintiff argued that this exclusion was inapplicable because it “only
2 refers to the no-fault workers’ compensation claim for which Lucatero was already paid—not his
3 separate and independent negligence claim against Pacific Coast.” (Reply Br., p. 8.) The Court
4 rejected this argument. (Order, pp. 7–8.) The Court then examined the language of the
5 exclusion, concluding that the exclusion unambiguously applied to preclude coverage. (Order, p.
6 9.) Lucatero suffered an on-the-job injury and filed a workers’ compensation claim with the
7 State and received workers’ compensation benefits for that injury. He then sued Pacific Coast
8 for negligence arising out of that same injury. The Court concluded that the exclusion precludes
9 Pacific Coast from obtaining coverage.


10 In its motion for reconsideration, Pacific Coast argues that the exclusion does not apply
11 to certain parts of Lucatero’s negligence claim. Pacific Coast points out for the first time that
12 Lucatero sought damages for pain and suffering—in addition to disability, wage loss, and other
13 damages—in his negligence suit against Pacific Coast. (Mot. for Reconsideration at 4.) Pacific
14 Coast argues that because Lucatero accepted no “benefits” for pain and suffering “under any
15 workers’ compensation . . . law,” the exclusion does not apply and Pacific Coast therefore has
16 insurance coverage for at least Lucatero’s pain and suffering claim. (Mot. for Reconsideration at
17 5–6.)

18 Pacific Coast did not raise this argument with the Court until now. Under Local Civil
19 Rule 7(h)(1), motions to reconsider are disfavored and are ordinarily denied unless the movant
20 makes “a showing of manifest error in the prior ruling” or provides “new facts or legal authority
21 which could not have been brought to [the court’s] attention earlier with reasonable diligence.”
22 Pacific Coast’s motion for reconsideration does not meet the requisite standard under
23 CR 7(h)(1). In its reply brief, Pacific Coast did not draw any distinction between claims for
24 which Lucatero received workers’ compensation benefits, such as medical bills and wage loss,
25 and claims for which he received no benefits, such as pain and suffering. For this reason, the
26 Court denies the motion for reconsideration without considering its merits.

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The clerk is directed to send copies of this order to all counsel of record.

Dated: August 28th, 2008.


Marsha J. Pechman
United States District Judge